IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9374 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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BHOLABHAI CHATURBHAI PATEL - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SAURIN A SHAH for Applicant(s) : 1,
MR AD OZA, LD.PUBLIC PROSECUTOR for Respondent(s) : 1,
MR RAJESHWAR J DAVE for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 26/09/2005

CAV JUDGMENT

1. The petitioner is the original accused, who came to be arrested on 22nd October, 2002, in connection with C.R. No.I-452 of 2002 registered with Naranpura Police Station for the offences punishable under

Sections 167, 406, 409, 467, 468, 471, 477 r/w. Section 120-B of the Indian Penal Code and also under Section 46 of the Banking Regulation Act. The petitioner has introduced himself in paragraph:2 of the memo of the petition as a law abiding citizen of the country, having graduated in Science and Law. It is contended that he had started legal practice in the year 1953 and joined public life in the year 1960 as a Social Worker at Visnagar. It is not necessary to mention various activities mentioned in paragraph:2 of the memo of the petition because these aspects were brought to the notice of the Court initially when the petitioner had approached this Court for bail after his arrest and when he had attempted to get regular bail even pending investigation of the crime. But in short, the say of the petitioner is that he is a man of very high reputation in the society as well as in the co-operative movement in the State of Gujarat. He has served as a Member of Legislative Assembly (MLA) of State of Gujarat for 10 years i.e. between 1985 and 1995, as well as Member of Public Accounts committee, Gujarat Legislative Assembly from 1986 to 1987. The petitioner has moved this Court on more than one occasions for bail and this Court has not

accepted the bail plea on merit on any of the earlier occasion. One such application moved to get regular bail was Criminal Misc. Application No.9498 of 2004. During pendency of the hearing of the said regular bail application, the petitioner was extended relief of temporary bail on the ground of health and the nature of treatment he was taking in the Civil Hospital and thereafter, in the private hospital. This Court vide order dated 10th February, 2005, rejected the prayer of regular bail and the petitioner was granted four weeks time to surrender before the Jail Authorities, especially in order to enable the petitioner to approach the Apex Court in between, if he so desired. Being aggrieved by this order, the petitioner preferred one petition being Special Leave Petition (Cri) No.1169 of 2005 and vide interim order dated 07th March, 2005, the time to surrender to the Jail Authorities granted by this Court was extended till further orders by the Apex Court. The Apex Court after hearing both the sides dismissed the said Special Leave Petition vide order dated 01st August, 2005. On the strength of one observation made by the Apex Court in the order, the present application has been filed saying that the petitioner has been granted permission by the Apex

Court to approach this Court afresh for regular bail observing that this Court has not decided the bail plea on merit. For the sake of brevity and convenience, it would be appropriate to reproduce the order dated 01st August, 2005 passed by the Apex Court in the above mentioned Special Leave Petition, which is as under :

> "By the impugned order, the High Court declined o extend the bail granted to the petitioner on medical ground and granted four weeks' time to him to surrender before the jail authorities. ***A perusal of the impugned order does show that any submission was made before the High Court for grant of bail on the grounds other than the medical ground.*** Mr.Sushil Kumar, learned senior counsel for the petitioner on instructions from Mr.Saurin Shah, learned advocate, who is said to have argued the matter before the High Court, submits that the arguments before the High Court were also addressed for grant of bail on merits, i.e. on the grounds other than the health condition of the petitioner. As already stated, it does not so appear from the impugned order. Insofar as the refusal by the High Court to grant further extension on medical ground is concerned, we find no ground to interfere with the impugned

order in exercise of power under Article 136 of the Constitution of India. ***Therefore, while dismissing the special leave petition, we extend the time granted to the petitioner to surrender by another four weeks so that the petitioner, if so advised, may move appropriate application before the High Court for considering his prayer for grant of bail on merits. The said application, if filed, would be considered on its own merits. We, however, express no opinion on the merits of the case.***

With aforesaid observations, the special leave petition is dismissed."

(emphasis applied for present order)

2. The memo of present petition is a detailed petition running into about 50 pages and Mr.A.D. Shah, learned senior counsel, has taken me through the history of the earlier petitions filed by the present petitioner and the orders passed thereon. He has also taken me through certain observations made by this Court while dealing with the earlier applications and the orders extending the temporary bail granted or extended by this Court on the ground of health. He has also taken me through some of the orders passed in favour of co-accused persons of the

same crime granting them bail on merit; especially the orders granting bail to the son of the petitioner-Kaushikbhai and the order passed in favour of another co-accused-Babubhai Shivlal Shah.

3. To appreciate the say of Mr.A.D. Shah, learned senior counsel appearing for the petitioner, firstly I would like to reproduce the nature of main reliefs prayed for in the main petition in paragraph:17, which is as under :

> ***"17(ii)*** that during pendency and final disposal of the present petition the Hon'ble Court be pleased to extend the time to surrender granted to the petitioner upto 31.8.2005 by the Apex Court until further orders;
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> ***17(iii)*** that the Hon'ble Court may be pleased to pass an appropriate order granting bail to the petitioner in connection with C.R. No.I-452 /2002 registered at Naranpura Police Station in view of the peculiar facts and circumstances stated above;"

4. This Court has been extending the time to surrender of the petitioner before the Jail Authorities from time to time and lastly the same is extended till

the date of decision of this Court in the present application so that the petitioner may not feel that when the Apex Court had granted extension pending hearing of Special Leave Petition (Cri) preferred by him, this Court ought not have forced him to surrender before the Jail Authorities ignoring the detailed petition for regular bail filed by him on the strength of the observations made by the Apex Court in the aforesaid order.

5. Mr.A.D. Shah, learned senior counsel appearing for the petitioner, has concentrated his arguments on various points including the ground of health and old age of the present petitioner. But this ground of health or advanced age of the petitioner would not help the present petitioner because this Court has dealt with the submissions on merit on more than one occasion and the Apex Court has also refused to grant regular bail on the ground of health or advance age while dismissing the Special Leave Petition vide order dated 01st August, 2005. On the contrary, the impression created in the mind of the Court is that the petitioner has regained his health on account of the opportunity to get best treatment given by the Court by passing earlier orders of

extension of temporary bail and granting of bail for a fixed period and in the event of some exigency, the State is able to take care of the present petitioner by providing health assistance through Civil Hospital; especially U.N. Mehta Cardiology and Research Centre where the petitioner has taken treatment for a reasonable good period because of the interim orders passed by this Court.

6. Mr.A.D. Shah has submitted that the contentions of the present petitioner to grant regular bail should be dealt with on merit and all the grounds were agitated before the Court for filing a detailed regular bail application, if need is considered a fresh as if these grounds were never discussed or decided because of the orders passed by the Apex Court while dismissing th aforesaid Special Leave Petition. The first submission of Mr.Shah is that the petitioner was not at all responsible for any wrong which has been committed in the Bank or by the Bank because the functioning of the Bank was mainly on two committees constituted i.e. Advisory Committee for several branches of the Bank and Loan Sanctioning Committee which was common for all branches of the Bank and these committees were very

well functioning till the Administrator was appointed on the Bank on 13th August, 2002 and overall responsibility was on the shoulder of the Manager and other managerial staff of the Bank and he had only supervisory status in the Bank. The names of about 16 persons have been mentioned in paragraph:9 of the memo of the petition who have been granted regular bail and it is submitted that the present petitioner was also granted bail by High Court from 30th June, 2003 to 29th July, 2003 and 01th October, 2003 to 09th February, 2003 and thereafter, he was granted time to surrender before the Jail Authorities upto 09th March, 2005 and at present he is on temporary bail on account of extension of time to surrender granted by the Apex Court as well as this Court. It is necessary to mention that one of the accused Babubhai Shivlal Shah is enjoying temporary bail because the substantial amount borrowed by Kaushikbhai Bholabhai Patel (son of the present petitioner) and son of Babubhai Shah is now being paid gradually. So in the event of failure in making payment undertaken by Kaushikbhai Bholabhai Patel and/or son of Babubhai Shah, may bring the cancellation of temporary bail of Babubhai Shah and regular bail granted to Kaushikbhai Patel. According

to me, the bail granted to two borrowers who had taken loan of crores of rupees from the very bank would not be a matter of much relevance and some of them have started paying amount to the Bank. The status of the borrower of a bank who has obtained loan under a conspiracy to siphon off money of the Bank with the help of present petitioner an other senior managerial cadre personnel is materially different. Undisputedly, the present petitioner was and is the captain of a team which defrauded the Bank and its depositors. The element of manipulation of account is also emerging because in absence of substantive recovery of interest of loan amount or net profit large sum was advanced to some of the borrowers against the adjustment of loan and some institutions have been paid donations beyond actual capacity to pay and there is ample evidence on record to show that the petitioner was not only key person in arriving at a particular decision by the respective committee. It also emerges that some loans were disbursed against the resolution and Mr.A.D. Oza, ld.Public Prosecutor, has rightly placed reliance on certain aspects which makes the case of the prosecution against the present petitioner a strong prima facie case.

7. Mr.A.D. Shah, learned counsel appearing for the petitioner, has submitted that the Reserve Bank of India (RBI) Audit Report justifies many actions including act of giving donations to charitable educational institutions. It is not the say that the said amounts were donated against the policy or guidelines issued by the RBI. This aspect is likely to to against the present petitioner because the Audit Committee of the RBI has to see the account adjusted at the end of financial year and when the loans are adjusted immediately prior to the end of a financial year or to a given date when the borrower is supposed to repay the interest and loan amount by doing fresh advances, are not supposed to be counted upon unless it is noticed by the Audit Committee. If this version of Mr.Shah is accepted then it would amount to accepting one of the defence plea as to disbursement of amount by way of donation to the institutions where the petitioner might be craving to have command or influence merely because other banks were also donor to the institutions where the Bank in question had donated, by itself would not make the action of the petitioner justifiable. Here the say of the prosecution is that though there was

no actual capacity or net financial gain and the things shown to the RBI were a paper flower bouquet. This submission of Mr.Shah is not found accepted. So the details mentioned in the petition are not found convincing in weighing the case in favour of the present petitioner. Here I would like to note that on earlier occasions when the Court was not inclined to grant regular bail to the petitioner on merit and has shown inclination to assign reasons by appreciating material documents collected by the Investigating Agency but the same was not done only with a view to prevent prejudice to the petitioner-accused and the Court was aware that it might be indirectly evaluating evidence collected by the prosecution, which is not the business of the bail Court. On some occasions, even this Court has observed that the petitioner has no case on merit so far as regular bail is concerned but I would like to refer to those observations later.

8. It is true that the petitioner has been granted bail for three different offences registered with Visnagar Police Station, practically in compliance of the order passed by the Apex Court for committing similar offences for which he is being prosecuted on

earlier complaint filed with Naranpura Police Station registered in the year 2002 i.e. C.R. No.I-452 of 2002. So under a larger conspiracy when the accused was found guilty of more than one offence by the Investigating Agency, a formal separate complaint can be filed and for how many times a person accused can be arrested for defrauding the same Bank at different places and with the help of different set of accused. So one of the questions, I am told, posed before the Apex Court when the petitioner was directed to appear before the competent Court at Visnagar and pray for bail. Of course, a copy of the aforesaid Special Leave Petition (Cri), filed by the petitioner before the Apex Court on earlier occasion under which he was directed to approach the competent Court for appropriate favourable order of bail, is not a part of the present proceedings. But the prosecuting agency positively can point out once the copy of the said petition was tendered to the Court for perusal and contents thereof. In the same way, in the present crime the Police had continued investigation and many of the borrowers have been arrested at a later stage during the course of investigation and more than one supplementary chargesheet has been

filed. But so far as the present petitioner is concerned, the case placed by the prosecution was available to the Court for appreciation in deciding whether the petitioner deserves any discretionary relief of bail and after submission of chargesheet against the present petitioner, the Court decided not to exercise discretionary jurisdiction of granting bail pending trial and keeping mind the condition of health of the present petitioner, the Court decided to grant bail for a fixed period. On all earlier occasions when the temporary bail was granted and subsequently extended on occasions, was based on papers of treatment which was being given to the petitioner. When the Court found that this is not a fit case for regular bail so far as petitioner is concerned, the petitioner was granted bail for fixed period so that he may not have to approach or to get extension after intervals of some days. It is true that the observations made in Condition "O" of the order (paragraph :26) dated 22nd April, 2004, passed in Criminal Misc. Application No.2926 of 2003, provides that :

> ***"(O)*** *shall be at liberty to apply afresh after a period of six months for extension of temporary bail and/or for*

regular bail and if such application is made, the same shall be heard and decided on merits and in accordance with law."

9. However, this Condition "O" should be read in reference to the earlier paragraphs of the decision and the situation under which the Court decided to grant bail for a fixed period and the earlier order of extension of temporary bail pending hearing of the said bail petition. When the Court has refused to consider the regular bail, the ground of health only was pressed into service and that point was hammered and, therefore, that point pressed into service by Mr.S.A.Shah, learned counsel appearing for the petitioner, in the said petition, the Court decided to grant temporary bail. While passing such orders, the Court cannot even indirectly think that the condition of health of the petitioner-accused may become delicate or more serious and if complaints made before the doctor are really genuine and if the petitioner becomes disabled within a period of six months, then in that situation, he can pray for extension of bail, which was granted for a fixed period and simultaneously at that time, the Court can also consider the regular bail plea and

the petitioner may not get the order of rejection on technical ground that his request for bail is nothing but a successive application. So this small window by putting Condition “O” was kept in the order solely on a humanitarian ground and the Court perceives that the same has been wrongly projected by the learned counsel appearing for the petitioner before the Apex Court and, therefore, it seems that the learned counsel representing the petitioner before the Apex Court was able to submit that rejection of earlier bail application is a rejection of bail plea on the ground of health and the same was not on merit. Each point that has been placed in the present petition was argued, pressed into service and at one point of time, Mr.S.A. Shah, learned counsel appearing for the petitioner, had decided to press into service only ground of health for regular bail and the Court found that this is not a fit case wherein the regular bail should be granted to the petitioner but in view of earlier order of extension of temporary bail and the nature of treatment that the petitioner had taken in earlier years, he should be granted bail for a fixed period so that he can complete the treatment and in that period of six months, if the situation

takes the worst turn then he can approach this Court for regular bail on the ground of health and such ground of health and such ground of health if pressed into service for regular bail then the petitioner may not receive an order of rejection saying that the bail plea on the ground of health has been decided on merit and, therefore, regular bail on the same grounds again cannot be prayed or at least can be granted. It is fortunate that the Apex Court as well as Full Bench of this Court has observed that successive application in respect of the same offence of one accused, whose bail plea has been entertained by a particular Bench, the subsequent such petition should be heard and decided by the same Judge/Bench. The Full Bench of this Court in the case of Babubhai Bachubhai Bhabhor v. State, reported in 2004(3) GLH 101 has held that :

> *"**8.2** It is clear from the decision in Shahzad Hasan case that the proposition that if the bail applications of an accused are rejected by a particular Judge, subsequent bail applications by that accused should be placed before the same Judge, was not based only on the practice that prevailed in the Allahabad High Court, but was found to be rooted in principle. The convention that subsequent*

bail applications should be placed before the same Judge prevents abuse of process of the Court, avoids passing of conflicting orders and saves Court's time. The Supreme Court in terms held :"Judicial discipline requires that such matter must be placed before the same Judge, if he is available for orders". Thus, th ratio of this case could not have been confined to its facts on th basis of existence of a practice in Allahabad High (C.K. Buch, J) ourt or absence of practice in this High Court, as done by the learned Single Judge, while releasing the present application. The ratio of the decision of the Supreme Court is loud and clear that judicial discipline demands that where bail application of an accused is rejected by a Judge, his subsequent bail applications should be placed for hearing before the same Judge, if he is available for orders. Such a course is appropriate and desirable and rooted in sound principle."

10. Mr.A.D. Shah, learned senior counsel appearing for the petitioner, has pointed out some other aspects also which can be mentioned in brief, are as under :

(i) The donation to the charitable institutions by the Bank cannot be considered as an act of taking indirect

advantage because the day on which the Bank was to put under the administration of the Administrator, this very charitable institutions itself had large sum of deposits. So these charitable institutions themselves could not realise the full amount of donation. So on the contrary, where the petitioner had built up his image by offering donations from the Bank under his management are the losers because their investment and deposits are at stake.

I have considered the relevant page:66 of the order dated 22nd April, 2004 and the bunch of papers supplied to the Court and the averments made in the petition (Pages:38 to 40).

(ii) Conversion of nominal members to regular members should not be considered as mala fide or with ulterior motive and it is submitted that this has been done on the recommendation made by the RBI to convert nominal members into regular members at the earliest.

However, it appears that the petitioner wants to convert this advice given by the RBI on account of earlier defaults committed by the petitioner as a plea of explanation. The evidence on merit would make this thing clear as to how many nominal members were granted huge amount of loan or cash credit facility or other financial favour and how many of them have successfully maintained their accounts with the Bank in a professional manner. Any further comment on this point, would be evaluation of documentary evidence collected by the prosecution in this regard.

(iii) It is submitted that the statement of Chetan Shah or Alkesh Shah has not been recorded by the Investigating Agency, which is an important aspect of the matter. Even it is the fact that Babubhai Shah, another one of the main offenders, is enjoying temporary bail.

The fact of not recording statement of Chetan Shah or Alkesh Shah

would not be a matter of relevance and the fact of enjoyment of temporary bail by Babubhai Shah, another one of the main offenders, would not help the present petitioner because as discussed earlier, the said Babubhai Shah is enjoying temporary bail and the Court is supposed to consider the case of the prosecution based on papers of investigation submitted to the Court.

(iv) It is also submitted by developing arguments in the background of public interest involved in the matter. It is further submitted that after arrest of the petitioner by the Investigating Agency, some of the borrowers have started paying amount.

The Court is not attracted by the arguments developed in the background of public interest involved in the matter. It is true that after arrest of the petitioner by the Investigating Agency, some of the borrowers might have started paying amount so that they can avail bail

and they can pose themselves as genuine businessmen. If some borrowers have started coming to the Administrator so that they can repay some amount and interest of some of the depositors is capable of being taken care of under the umbrella of insurance would not make the case of the present petitioner good. Allegedly, profit making Bank puts its depositors in such a precarious situation, that too, on the dishonest of conduction of the affairs of the Bank is the point requires to be considered because while dealing with the bail plea, the Courts are supposed to keep a factor I mind that if the bail is granted whether the Court would be sending a wrong signal to the society or not. The captain of a ship should not attempt to jump out of the ship when in danger because it is his duty to see that the ship survives or he goes with the ship. Any conduct other than this should not be even indirectly encouraged on the minor ground like age or health of the accused. In the present case, the

petitioner has comparatively recovered well and capable of being treated in the well-equipped Government hospitals. The ground of parity also would not help the present petitioner at all because the status and responsibility of the petitioner in the background of certain clear facts that he is a well-educated, literate and ex-lawyer who has practised for some years as an advocate and who has been a Member of Accounts Committee of the entire State, he cannot be legally permitted to submit that the basic management was with two different committees and he is probably misled by the senior managers of the Bank. On the contrary, the statement of some of the witnesses, borrowers and staff members of the Bank clearly suggest that Babubhai Shivlal Shah and the present petitioner are very well active in the administration of the Bank and each important decision for granting large sum by way of loan or other facilities and actual disbursement of amount so offered by the Bank as

advances. So the return of some borrowers to the Bank and their attempt to pay some meager amount from the amount which they have received would not help the petitioner and this fact cannot be equated with “change in circumstance capable of bringing favourable decision”. On the contrary, it emerges that some harsh action arresting the borrowers where the borrowers who are found involved in siphoning off money of the Bank and the depositors with the help of the petitioner-accused and other directors have compelled these borrowers to go to the Bank. At present the bail Court is supposed to consider the nature and gravity of the crime committed and the role of the petitioner-accused.

11. When earlier application was filed and disposed of, the investigation was pending and it is found by the Court that the petitioner is able to influence the witnesses and capable of tampering with the documentary evidence also and the entire thrust of the prosecution was on the pendency of investigation

in number of other offences registered against the borrowers, etc. It is true that it was submitted by Mr.A.D. Oza that at least the petitioner should not be enlarged on bail, till the investigation of all the cases registered against the present petitioner is concluded. This point has been developed by the petitioner in the present petition in detail but on completion of investigation also, it appears that some of the key witnesses are employee of Visnagar Co-operative Bank Ltd. and working under the petitioner-accused. The Police has recovered most of the documents but the safety of other relevant documents, which can be referred to or shown to the Court as corroborative piece of documentary evidence and thousands of pages lying in the volume of the Bank accounts shall have to be brought before the Court to prove the genuineness of the documents seized by the Police and are capable of being referred to by the witnesses during the course of cross-examination. So it is not possible for this Court to say that the State had no resistance against the regular bail provided the investigation is concluded. It would be wrong to argue that in each case where the witnesses are not capable of approaching the accused where the nature of evidence

is basically documentary evidence, the bail should be a matter of course. The grant of bail depends on various circumstances and facts of each individual case and that too against each individual accused. The mute question before this Court when the bail plea is raised, is whether the petitioner-accused deserves any discretionary relief of bail as his privilege to live as a free independent citizen because presumption of innocence in favour of all the accused persons is always there.

12.1 The present petitioner has approached this Court for various reliefs mainly of bail by filing different petitions. Most of them are Criminal Misc. Applications praying for either bail or temporary bail or for extension of temporary bail granted earlier. It is possible to mention some such numbers like Criminal Misc. Application Nos.6979/2002, 7080/2002, 7106/2002, 7175/2002, 7274/2002, 7374/2002, 6922/2002, 8103/2002, 8737/2002, 8748/2002, 340/2003, 444/2003, 1675/2003, 2706/2003, 2781/2003, 2926/2003, 5171/2003, 6175/2003, 6950/2003, 10072/2005, etc. But this Court has not granted regular bail or has ever shown any inclination to grant regular bail to

the present petitioner when the Court was asked to grant regular bail to the petitioner for the reasons assigned by the Court. Once even temporary bail was not granted/extended which was granted earlier on the ground of health of the petitioner and the petitioner was taken into judicial custody.

12.2 One of the arguments of Mr.A.D.Shah, learned senior counsel appearing for the petitioner is that in the month of July, *2003,* the petitioner was taken to Government Civil Hospital by the Jail Authorities for treatment because of health problem and, thereafter to facilitate the petitioner this Court, after a lapse of some period, had granted temporary bail to the petitioner on health ground when he was taking under treatment under the observation of Cardiologist of U.N. Mehta Institute of Cardiology attached with the Government Civil Hospital. This Court even accepts today that the health of the petitioner is not very good and he has become older by two more years from that date but he is far more comfortable on account of conservative treatment.

12.3 It is also one of the arguments that none of the grounds under which regular bail plea has been

turned down by this Court earlier or after filing of the chargesheet even does not now exist, because the investigation is over. Practically all the supplementary chargesheets have been filed and there is no scope of submission of fresh supplementary chargesheet except for the accused persons who are still absconding. So when the investigation is over and when there is no possibility to proceed with the trial expeditiously and to conclude it in a given period of time, the petitioner-accused should be enlarged on bail because he himself has not received any financial benefit directly and the son of the present petitioner, who was a party in taking financial advantage of the administration of his father i.e. present petitioner-accused, is on bail and some amount has been paid by him in the account where the liability of the son of the petitioner has been fixed. The son of the present petitioner had started Joint Ventures with the son of the accused-Babulal Shivlal Shah, who is one of the main conspirators and has not been granted regular bail till date. Of course, the efficient police has not placed any papers establishing the link of investment of siphoned off amount in the said

business.

13.1 Mr.A.D. Oza, ld.Public Prosecutor, has tried to point out that though none of the fixed deposit holders have been paid amount of their T.D.R. or F.D.R., in the case of the son of the present petitioner, the Registrar, Board of Nominees has drawn a decree saying that set off of the entire amount of deposit may be given to the petitioner's son by the Bank and the tug-of-war against the present petitioner is pending before the higher forum. This Bench is not supposed to comment upon this factual aspect but the fact remains that the case of the prosecution is consistent from the very beginning that under the influence and as per the conspiracy hatched, the persons in inner circle of the petitioner have been obliged for crores of rupees either by granting loan or by granting cash credit facility, etc. It is true that 162 witnesses are required to be examined but in cases of criminal conspiracy, the Criminal Courts have examined more than 100 or 200 or even more witnesses throughout the country on number of occasions. The son of the present petitioner is found involved in three different transactions and

the return of Bank guarantee is one of the mode under which it is argued that the liability of the son of the present petitioner is not of more than Rs.45 lakhs though it is alleged that when the transactions were entered into by the bank, the total amount was of about 17 crores.

13.2 Without entering into merits of the transactions entered into by the son of the present petitioner, it is clear that limited number of persons i.e. about 19 persons or concerns have been given substantial amount by the Bank i.e. more than 200 crores, under the alleged illegality or irregularity and the amount of the Bank has been siphoned off in a planned manner is the allegation. The chargesheet says that in favour of following 19 different persons/companies the following amount was either given or is outstanding towards the amount of loan or towards the cash credit facility, which was not returned to the Bank. The case of the prosecution is that the Bank management including the petitioner and the person-borrowers were fully aware about the fact that they were not going to return the said amount to the Bank and ultimately, one day the amount can be returned as bad debts/

not recoverable debts. The said figures mentioned in the chargesheet read as under :

Sr. No.	**Name of defaulter/ Company/Person**	**Amount (in rupees) borrowed from the Bank**
1	Speedwell Group	106 crores
2	Laser Eye Care	36 crores
3	Link Opticles	7 crores
4	N.K. Proteins	30 crores
5	Moon Drugs	15 crores
6	Niko Hotel	11 crores
7	Piyush Steel Ltd.	8.50 crores
8	Kashi Patel Construction	4.40 crores
9	Asthan Non-Trading Asso.	1.07 crores
10	Barma D. Pvt. Co.Op.So. Ltd.	1 crore
11	Mahan Traders Pvt.Ltd.	3.67 crores
12	Shivam Corporation	5 crores
13	Rasikbhai B. Pethani	10 crores
14	Parth Shop and Flat	3.77 crores
15	Yogi Builders	8.75 crores
16	Divani Timber Mart	5 crores
17	Vardev Marketing	2.50 crores
18	Panchdeep Corporation	8 crores
19	Popular Builders	46 crores

14. It is also the allegation that an amount of about 4.48 crores has been given to the relatives or the persons who can be said to be in close circle of the present petitioner. While dealing with Criminal Misc. Application No.2926 of 2005, decided on 22nd

April, 2004, this Court has considered each detail placed by the present petitioner to the notice of the Court including the details which are mentioned in the present petition and also the facts pointed out by Mr.A.D. Oza, ld.Public Prosecutor that as the order dated 22nd April, 2004, was not assailed before the Apex Court, it appears that the counsel representing the case of the present petitioner probably may not have referred to the said order dated 22nd April, 2004. It is argued that it was not possible for the petitioner to assail the order dated 22nd April, 2004, because of Condition "O" imposed by this Court, as discussed hereinabove, was there and the petitioner was granted liberty to approach this Court to pray for bail. The bail for fixed period of six months could have been utilised by the petitioner in getting maximum amount realised from the borrowers because he was the key person as per the say of the prosecution in getting the amount sanctioned. If the petitioner was genuine and had acted bona fide and that too with a view to expand the business of the Bank even in making risky investments then at least some of the depositors may have obliged the petitioner by starting repayment of substantial amount gradually within six months'

period. But the same arguments have been advanced which were advanced by Mr.S.A. Shah when earlier petition being Criminal Misc. Application No.2926 of 2003 was argued before this Court that the petitioner himself has not taken a single pai and because of default of the borrowers, he should not be kept in prison pending trial, as this would be pre-trial conviction prejudicial to personal liberty.

15. Therefore only, it is possible for the prosecution to argue that substantial amounts in all the above said major accounts were advanced with clear understanding or conspiracy or by following corrupt practices accepting kick back amount for advancing loan with certain internal irregularities. Even leaving scope that the claim of the Bank may fail before the competent forum or the bank may face difficulty in prosecuting the claim or in actual recovery so that it can be compelled to compound the dispute with substantial losses against recoverable by the Bank. It seems, therefore, that some of the absconding accused could not be arrested nor these borrowers have started repayment of the said loan amount so that the petitioner can submit to this

Court that he has utilised the fixed period of bail of six months pursuing some of them with a view to do justice to small depositors and management of the Bank.

16. So it would be wrong to submit that the order dated 22nd April, 2004, was not a total rejection of the regular bail plea but it was giving a very small room to approach this Court again for extension of temporary bail. If the petitioner's health deteriorates which can be termed as very delicate or serious, he can approach this Court for regular bail on the same ground simultaneously showing that while taking rest and conservative treatment through physician, his homework has helped the Bank and some of the depositors; otherwise there was no scope to approach this Court for regular bail. I may note that the learned counsel appearing for the petitioner has addressed this Court and Mr.A.D. Oza, learned Public Prosecutor, had argued at length and in detail on different dates. For the sake of brevity and convenience, I would like to reproduce relevant paragraphs of the order passed by this Court on 22nd April, 2004, which are as under :

*“**5**. I have carefully gone through the allegations in detail made in the complaint and each of the further statements recorded by the investigating agency of the complainant as well as of other witnesses in the background of relevant statutory obligations casted by the Legislature in the field of Co.Op.Banking and by Reserve Bank of India (RBI for short) regulating and supervising the functions of such Banks. So, undisputedly, on merits, it will be difficult for this Court, prima facie, to conclude that the averments made in the complaint are baseless or may not sustain at the end of trial and to hold prima facie at this stage that the complaint is practically motivated with a view to tarnish image of the Bank managed by the person associated with a political party sitting in opposition in the State Legislative Assembly and because the applicant as he was once a Minister in Congress-ruled government in the State of Gujarat. It may be that as a last resort, at one point of time, when scam had seen the daylight and at any time prior to the formal appointment of an Administrator, the applicant himself personally and also with the help of other members of Board of Directors, may have tried to bring some money from other investors or financial institutions and*

could have save the Bank from total collapse i.e. liquidation. Of course, Mr. Nanavaty has attempted to demonstrate these attempts through papers of investigation and also from the report of RBI and other documents placed on behalf of the applicant, but these submissions can not be given any weightage at this stage. On the contrary, this may add some strength to the case of prosecution. Such conduct of the applicant accused creates two impressions i.e. one in his favour and another against him namely that he himself was responsible for the outcome of the decision taken under his chairmanship, not only constructive and, therefore, he attempted to get flow of money from outside. The scam for which the applicant is posed as a person responsible is of Rs. 250 Crores and the applicant, his son Kaushik and one Sr. Advisor who was once in the managerial cadre of the Bank namely Shri Babubhai Shah, are shown as main persons involved in the scam and the master mind of the conspiracy hatched in siphoning huge sum of the depositors as narrated by practically all the prosecution witnesses. Experience in public life and in the field of co-operation, of the present applicant had helped the Bank in its leaps and bounds development. Ld. counsel appearing for the applicant has successfully demonstrated

before the Court that the present applicant was the key person in taking the amount of deposit collected from the investors. At high level and also in raising profits of the bank to crores of rupees, but the case of the prosecution is that this very efficiency and experience has made him a person who can take maximum disadvantage in misusing the funds of the Bank and in clearly misappropriating large sum under a particular pretext.

6. *It is not necessary to point out each example brought to the notice of the Court and it would be sufficient to mention one or two such examples. One such allegation is that he was a party in advancing sum in crores of rupees to co-operative societies/ institutions wherein he himself was a Chairman and that Society has not attempted to pay any amount. Another allegation is that in cases of certain selected parties, huge amount otherwise recoverable by the Bank, have been written off at the instance of the present applicant in the month of August 2002. Some are given donations and indirect advantage is taken. Some selected 20 parties were given very huge amount and in similar such cases, many have been advanced huge amounts without formal resolution or by tampering the relevant loan documents. The applicant*

joined the Bank and because active in the year 1982 and since 1993-94, he was Director-cum-Chairman of the said Bank till 30.8.2002. So, main allegations against the applicant is that he has committed breach of trust of his own depositors i.e. depositors of the Bank and such a breach of trust i.e. breach of trust by a Banker should be viewed very strictly and seriously. The gravity of the offence can be decided from various angles in such cases; viz (i) total amount involved in the Scam, (ii) status of the accused, (iii) number of depositors ultimately affected, (iv) number of employees affected, (v) impact of the crime i.e. breach of trust committed, on the society, (vi) quantum of punishment prescribed, (vii) what is the actual amount used or taken away or misappropriated by the accused personally or by his close relatives or friends,(viii) if the accused, prima facie, can be said to be involved in the conspiracy in committing such breach of trust. On all these counts, according to prosecution, the applicant accused is the main person and mastermind behind the entire Scam of about 250 Crores of rupees and violator of RBI Guidelines and statutory provisions. So, intention or mens ria from the conduct by itself can be inferred and prosecution may not have to

lead detailed evidence in this regard. In such cases, strength of the prosecution is in the documentary evidence and prosecution has collected en-number of documents in support of the case placed against the present applicant and, therefore only, number of further statements of the very complainant have been recorded by the Investigating Agency.

7. *Ld. counsel appearing for the applicant have developed various points while requesting the court to exercise discretion in favour of the present applicant and if they are mentioned in nutshell, they can be enumerated in the following:*

> ***(i)*** *Accused is in custody or under police surveillance since the date of his arrest and at present approximately One Year & Six Months have elapsed and there is no scope of conclusion of trial in a near future i.e. before 3, 4 or 5 years;*
>
> ***(ii)*** *Except some absconding accused, all the main accused persons have been enlarged on bail by this Court on certain stringent condition including the son of the applicant namely Kaushik Patel and one Babubhai Shah and both of them are complying*

with the conditions imposed by the Court while enlarging them on bail.

(iii) *The accused has undergone bypass surgery before some years and since then he is a patient of Heart Disease. On the date of arrest also, he was undergoing treatment and taking regular medicines and at present health of the applicant has further deteriorated. By various orders of the Court, the applicant is granted temporary bail and at present he is enjoying liberty granted temporarily, of course in SAL Hospital and that too under Surveillance and it will be risky to keep the applicant accused either in jail or in a jail ward of the hospital.*

(iv) *Age of the accused is very old and he is aged about more than 70 years and so considering deteriorated condition of his health, applicant should be considered as a person "old and infirm" and in this fact situation, should be viewed in light of special provisions made under Sec.437 of CrPC.*

(v) *That applicant accused*

himself has not taken any personal advantage and it is not the case till the date of prosecution that a particular sum has been misappropriated by him or amounts were transferred to his account, nor he is a defaulter.

(vi) *The large sum of money by way of deposit of the family of the accused is with the Bank. Liability of his son Kaushikbhai was also of limited amount and he is ready to see that the amount payable by his son Kaushikbhai is paid regularly. It is relevant to note that at this stage initially bail plea of Kaushikbhai Patel, S/o the present applicant was turned down by this Court and even the Apex Court had rejected his bail plea on merits. However, by detailed order passed by this Court while dealing with Cri.Misc. Application No. 5881/2003 (Coram:Akshay Mehta, J), this Court has enlarged Shri Kaushik Patel on bail and one of the ground for enlarging him on bail is that he can attend his failing father i.e. present applicant who is taking treatment in a Hospital in the city of Ahmedabad. So, it is submitted that*

if the application of the present applicant is rejected, then indirectly his only son Kaushikbhai Patel would not be able to attend his ailing father and important purpose would frustrate.

(vii) *It has been further submitted that daughter of the present applicant who is attending the present applicant when his son Kaushikbhai was in judicial custody, has been declared a patient of cancer.*

(viii) *It is a matter of fact that Chairman & Board of Directors in the number of Co.Op. Banks, have been found involved in various scams of crores of rupees like the same in Madhavpura Mercentile Co.Op. Bank Ltd., Chairman & Director of such Banks have been enlarged on bail by different Benches of this Court and so, the present petitioner should also be treated at par with such accused persons.*

8. *Ld. counsel Mr. Saurin Shah has taken me through the observations made in the Report of RBI and Notes made by the Auditors of the Bank and in none of these*

documents which are relevant, the present applicant is held as a person responsible for the scam. On the contrary, it is submitted this Court should not accept the say of the prosecution that the applicant himself has attempted to kill the Institution which was flourished and developed but for his efforts and endeavour. It is further stated that the applicant is a man of repute, his presence can be secured at any time, he was once a Minister in the State Government. The real defaulters who have cheated the Bank are now asked to pay the amount misappropriated by them and some of them are paying agreed amount to the Bank and when Members of Loan Committee have been enlarged on bail by this Court, it would not be proper for the Court to say at this stage that the present applicant was a sole dictator in the decisions taken for advancing huge amount to certain limited parties and there was no role of other Committee Members. It is not the duty of the Chairman to scrutinise the loan documents and the person who could have been made accused by the Investigating Agency, is made a complainant and some of such persons have been made witnesses by the prosecution. In this situation, the applicant should not be kept behind the bars for indefinite period.

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9(ii) *Role played by the accused is narrated by ld.PP Mr. Oza and he has submitted that formal misappropriation of money is not required to be proved by the prosecution in such or similar cases. Managers of the Bank can take disadvantage of their position in various manners if they know how to play tricks which have been played by the present applicant in the instant case. Son of the present applicant was made a partner in one of the businesses to whom the Bank has advanced money. More than one Institution or Co.Op.Society have been advanced large sum of funds from the Bank by a decision taken under the Chairmanship of the present applicant wherein the present applicant himself is either a Chairman or a person controlling the affairs of those Institutions or Co.Op. Societies and those institutions are not paying any heed to the request to return the amounts/loans advanced by the Bank. In more*

than one cases, in absence of formal resistance either by the Board or by the Loan Committee, money has been advanced at the instance of the present applicant and some documents have been tampered so that the amount granted against Over Draft Facility can be increased. A special favour has been shown to a limited class of borrowers whose debt/liabilities have been written off to huge extent at the instance of the present applicant. Example pointed out on behalf of the applicant of one Jayantibhai Revabhai Patel would not help the applicant on the point of parity at all. An amount of Rs.60 Crores have been sanctioned by the Head office at the instance of the applicant accused without proper recommendations and where investigating agency had found that relevant papers are tampered with. In some cases, back-dated resolutions have been passed only with a view to regularise the wrong done earlier. The applicant accused,

according to ld.PP Mr.Oza, was responsible for flouting the guidelines issued by RBI from time to time.

9(iii) *Ld. PP Mr. Oza has further submitted that over and above constructive responsibility and direct liability, as per the case of the prosecution, the indirect liabilities of the applicant are as under:-*

Name of the Firm	***Type of Loan***	***Loan amount(in lacs)***	***Amount out-standing(in lacs)***	***Relationship with Bholabhai-applicant***
Paston Construction	*HP*	*15.00*	*NIL*	*One of the partners Govindbhai-Brother in law.*
Gurukrupa Chemicals	*MH*	*10.00*	*09.66*	*One of the partners Navin Girdharlal-Cousin Brother*
-do-	*HL*	*15.00*	*17.04*	
Tribhovn J. Patel	*OD*	*04.90*	*04.78 approx.*	*Brother-in-law*
Karamvir Sankalchand (C.K. Buchastor Complex Co.Op.Society Ltd.	*AB*	*10.00*	***0****7.52*	
-do-	*AB*	*435.00*	*391.00*	
Visnagar Taluka Sahakari Kharid Vechan Sangh	*AB*	*500.00*	*600.00*	
S.K. Builders	*HL*	*62.00*	*44.92*	*Son-in-law*
S.K. Distributors	*HP*	*25.00*	*18.88*	*Son-in-law*
S.K. Traders	*IH*	*05.00*	*03.09*	*Son-in-law*
Machinery Stores Trade	*IH*	*25.00*	*01.59*	*Son-in-law*
Ashok P.Patel	*VL*	*05.75*	*03.68*	*Son-in-law*
B.Patel Infrastructures P.Ltd.	*HPL & BD*	*63.07*		

Name of the Firm	Type of Loan	Loan amount(in lacs)	Amount out-standing(in lacs)	Relationship with Bholabhai-applicant
Pioneer Irrigations Pvt.Ltd.	BD	68.81		
Kaushikbhai B.Patel	VHP	01.46		

Mr.Oza has further submitted that the investigation of other offences registered against the applicant is going on. Mr. Oza further submits that the prosecution apprehends that order of bail will put the applicant in advantageous position and he would be able to influence witnesses or tamper with documentary evidence because large number of documents are yet to be recovered by the Investigating Agency from other Institutions and Co.Op.Societies where the present applicant is in controlling position. He has further submitted that if tampered document is tendered to the police, then it may seriously prejudice the case of the prosecution. Number of accused persons are absconding. Some of staff members who were appointed by the present applicant are important witnesses who are to be examined by the prosecution and enlargement on bail of the present applicant would affect the morale of these witnesses and it may give an opportunity to the present applicant to emotionally

blackmail those witnesses. At least, till the investigation in all the cases registered against the present applicant is not concluded, this Court should not enlarge the present applicant accused on bail.

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15. *I have considered the above decisions on facts and other circumstances emerging from the cited decisions and relevant paras referred to by ld. PP Mr. Oza.*

(i) *Considering the decision in the case of Shivnarayan Laxminarayan Joshi (supra), this Court is of the view that the above-cited decision would not help the prosecution. It propounds general principles that when Court should be called upon to exercise discretionary jurisdiction under Sec.439 of CrPC. The present case, on facts, falls under a category where the Court is supposed to respond to the arguments advanced in the background of the provisions of Sec.437 of CrPC because the ld. City Sessions Judge has refused to exercise discretion under the aforesaid provisions. It has been observed by the Apex Court in para-17 as under:-*

"17. *..... It was also stated that so far appellant Nos.*

2 and 3 are concerned, they were merely Muneems and were carrying out orders of appellant No.1. The High Court has, however, found that so far as accused 2,3 and 4 were concerned they were original conspirators who had assisted and abetted appellant No.1 in his attempt to misappropriate the amount. Thus, we do not find sufficient ground for reducing the sentence. It was further argued that appellants 2, 3 and 4 have practically served out about a year, and after lapse of 8 years it would not be desirable to send them back to jail. While considering the question of sentence the Court has to bear in mind the gravity of the offence also which has its impact on the public and particularly the persons who are deprived of their deposits. In these circumstances, therefore, we do not see any reason to reduce the sentences of any of these appellants. If these appellants are not keeping good health the Jail Superintendent would naturally take care of them and get them properly treated in the Jail Hospital and if any specialist is needed his service may also be requisitioned.

For these reasons we, therefore, dismiss the appeal of appellants 2 to 4 without any modification in the sentence."

(ii) *The next decision i.e. The State (Through Deputy Commissioner of Police, Special Branch, Delhi) v/s Jaspal Singh Gill (supra), talks about the larger interest of the State and public when the bail plea is pressed into service by an accused involved in such or similar offences. The Apex Court has observed in para-9 as under:-*

"....I have also gone through the decision of this Court in Gurcharan Singh v. State (Delhi Administration), (1978)2 SCR 358 : (AIR 1978 SC 179) and Gudikanti Narasmhulu v. Public Prosecutor, High Court of Andhra Pradesh (1978) 2 SCR 371 : (AIR 1978 SC 429) which deal with the principles governing the grant of bail. It may be mentioned here that in the last of the above cases, the accused had been acquitted by the trial Court but convicted by the High Court on appeal. On a consideration of the above three decisions, I am of the view that the Court before

granting bail in cases involving non-bailable offences particularly where the trial has not et commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with the larger interests of the public or the State and similar other considerations." (Emphasis supplied).

The above observations so far as bail on merits is concerned, would positively go against the present applicant accused.

(iii) *The next decision referred to and relied upon by ld. PP Mr. Oza is in the case of Amrutbhai Bholidas Patel (supra) which deals with temporary bail plea advanced by the applicant accused involved in a serious offence of a murder of his own son, wherein this Court has observed that when liberty is curtailed by law, the accused can not*

claim much freedom as a free man in the matter of medical treatment and the court has turned down temporary bail where it was prayed that he should be granted temporary bail as he is suffering from heart ailment and intend to undergo angioplasty in a particular hospital. This decision also would not help the prosecution because the ratio propounded by the Court is an accepted proposition of law, but on facts, it emerges that the alleged heart ailment was to be diagnosed and there was no long history of heart ailment or treatment qua accused of the cited decision. The Court was also not satisfied with the correct ness of the data placed on record. However, in the present case, even prior to the arrest of the applicant, he has undergone a bypass surgery at Channai and on satisfaction the Court has granted temporary bail so that he can underwent second bypass surgery if possible by known Cardio Thorasic Surgeon of the country at Apollo Hospital, Chennai. But, in view of other physical impairments namely diabetes, age etc. second bypass surgery could not be performed and, therefore, when present applicant was sent under police surveillance/escort to Channai, had returned to Ahmedabad without performance

of second bypass surgery and it would be difficult for this Court to say that record produced from Chennai Hospital is under any influence of the applicant accused including the certificates and report of Angioplasty Coronary Diagram. Report of Chennai Hospital dated 24.7.2003 is on record with necessary annexures and the certificate issued by Dr. Mathew Samuel.K dated 24.7.2003 wherein Dr. Mathew has certified as under:-

> *"Mr. Bholabhai Patel was admitted here on 7.7.2003 with Unstable angina. He was stabilized and taken up for coronary angioplasty on 22.7.2003. We have scheduled his discharge on 25.7.2003 morning. I would advise him to continue all medications and restrict his activities to a level so that his angina is not precipitated. He should come back for a review after 3 months and needs a repeat angiogram at the end of 6 months. Detailed discharge summary is issued separately. He may please have follow up with local physician."*

So, this decision would not help

the prosecution.

(iv) *Next decision on which ld. PP Mr. Oza placed reliance is in the case of Mansab Ali v/s Irsan & Anr. (supra) wherein the Apex Court has observed that the provisions of CrPC confer a discretionary jurisdiction on criminal courts to grant bail to accused pending trials or in appeal against convictions. Since the jurisdiction is discretionary, it requires to be exercised with great care and caution and by balancing valuable right of liberty of an individual and he interest of society in general in granting or refusing the bail. As per the Apex Court, the Courts exercising powers under this section, are required to indicate, may be very briefly, the reasons for grant or refusal of bail. Jurisdiction has not to be exercised in casual and cavalier fashion. While disapproving the judgment of the High Court, the Apex Court undertook the exercise of going through the police papers and the evidence so far recorded by the trial Court to consider the prayer of the complainant for cancellation of bail. The observations of the Apex Court in the cited decision were that the trial Court was supposed to consider relevant factors like nature*

of accusation, character, behaviour, antecedents and standing of the accused. This decision would not help the prosecution squarely, but the ratio can be considered that before exercising discretion, this Court is supposed to keep balance between the freedom of an individual and interest of the society in general.

(v) *The next decision relied upon by ld. PP Mr. Oza is in the case of Balvantji Halaji Palvi (Darbar) v/s State of Gujarat (supra), wherein this Court has observed as under:-*

> ***"4.*** *.....It is also held by the Supreme Court in Ram Pratap Yadav v. Mitra Sen Yadav, 2002 AIR SCW 4851 : (2003(1) GLR 514(SC)), that the High Court should keep in mind, while hearing the application for bail, the factum of the prayer, having been rejected by the Sessions Court and the reasons therefor expressly set out in the order of the Sessions Court. It is specifically ordained that the order of the High Court, howsoever brief it may be, should make it appear that the High Court while forming opinion on prayer*

for bail was conscious of the reasons for rejection of prayer for bail as assigned by the Sessions Court. And, it is also recently observed by the Supreme Court in Mansab Ali v. Irsan & Anr., 2002 AIR SCW 5391, that since the jurisdiction to grant bail is discretionary, it is required tobe exercised with great care and caution by balancing right of liberty of an individual and interest of society in general. In granting or refusing the bail, the Courts are required to indicate, may be very briefly, the reasons for grant or refusal of bail. The jurisdiction has not to be exercised in a casual and cavalier fashion."

The facts are not identical. Status of the accused, his role in the crime, his responsibility towards investors and depositors of the Bank and the impact of the criminal conduct of the accused in the total management, push the case of the applicant into a separate category. It is true that all the Directors are equal and Chairman may be the first amongst the equals. However, looking to the bye-laws and other statutory provisions, each one is assigned a separate role

including the privilege to put his casting vote. It is true that different benches of this Court have enlarged Managing Directors or Chairmen of other Co.Op. Banks found involved in the similar scams on stringent conditions and some of them have been asked to deposit or pay a particular sum to the Bank as one of the conditions of enlarging them on bail. In the present case also, Mr. Nanavaty has submitted that present applicant though is not responsible to pay any amount as he has not borrowed any amount or has taken any advantage, he can deposit any amount which this Court may direct him to deposit between Rs.19 Lakhs to 93 Lakhas. However, subsequently it has been clarified by ld. counsel Mr. Saurin Shah that this submission has been made on behalf of the applicant before the Court because son of the present applicant has taken financial advantage of the management of the applicant and real brother of the present applicant was also owing some financial liabilities. As per the case of the prosecution, the applicant has put his real brother and son to financial advantageous position and both of them were defaulters on the day on which the complaint was filed. But thereafter, real brother of the present applicant was

arrested by the police and while in custody, brother of the applicant committed suicide. Till 15.04.2004, this fact was not brought to the notice of the Court, but this Court has no reason to disbelieve the statement of ld. Counsel Saurin Shah. So, it is submitted by the applicant accused may be relieved from obligation created because of the statement made before the Court and while doing this favour, this Court may also consider that the son of the applicant now has been enlarged on bail on certain conditions and he is complying with the condition of depositing Rs.10 Lakh per month to the Bank. However, Mr. Shah has clarified that the applicant may be asked to deposit any reasonable amount in the High Court as one of the conditions that may be determined by the Court.

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17. *The ratio of the decision of the Jharkhand High Court in the case of Lalu Prasad Yadav (supra) would not also squarely apply and that decision has persuasive value. Jharkhand High Court, in the cited decision has observed that:-*

"7. *Apparently a huge amount (Rs.37,62,79,883/-) was fraudulently*

withdrawn from the District Treasury at Chaibasa by presenting false bills even though there was no allotment from the Department of Finance and Animal Husbandry Directorate. Government of Bihar, Patna, and the said huge amount was withdrawn and misappropriated under a deep conspiracy as some of the tainted officials of the Animal Husbandry Department (AHD) who were directly involved and indulged in such type of defalcation were given protection and latitude by way of extension in the service.

8. *The allegations are very serious in nature in relation to fraudulent withdrawals and misappropriation of huge Government money and, as such, I am not inclined to enlarge the petitioners bail and, accordingly, their prayer for bail is rejected."*

18. *Mr. Saurin Shah, ld. counsel appearing for the applicant accused has placed reliance on the following decisions:-*

(i) *State of Maharashtra v/s*

Naninmal Punaji Shah & Another, 1969(3) SCC 904, wherein the Apex Court has dealt with the point of justification as to the grant of bail to the accused pending investigation in the background of apprehension expressed by the prosecution as to the tampering with evidence. In the present case, the chargesheet is filed. However, it is important to note that the applicant is involved in other offences which are still under investigation and there is some force in the say of ld. PP Mr. Oza that the applicant is enjoying status who can influence the witnesses who are yet to be examined by the prosecution. But considering the physical strength and age of the applicant accused, it would be difficult for this Court to conclude that even certain stringent conditions are imposed, then also the applicant would be able to play with witnesses. There is no reasonable apprehension of accused leaving country. Hence, this decision would not be of much help to the applicant.

(ii) *In the case of Mehmood*

Mohammed Sayeed v/s State of Maharashtra, AIR 2002 SC 482, the Apex Court has enlarged the accused on bail on imposing two conditions viz. (i) he shall not leave limits of Mumbai City Corporation without the permission of the trial Court, and (ii) shall report to Varli Police Station, Mumbai every Monday. In this cited decision, Apex Court was dealing with the bail plea pressed into service pointing out the fact that it was not certain as to how long trial will take considering the condition of the trial Courts particularly in the State of Maharashtra. According to Mr. Shah, in the present case and other cases which are under investigation, the same would require some years to conclude the trial. Hundreds of documents shall have to be proved and en-number of witnesses shall have to be examined by the trial Court. The applicant accused is in custody since the date of his arrest i.e. on 22.10.2002. He was granted police remand to Naranpura Police and till 1.11.2002, he was with police and remanded to judicial custody on 1.11.2002. Thereafter, the applicant was taken into

police custody under transfer warrant in respect of two other offences i.e. I.CR No.33/2002 and 364/2002 and other three complaints also came to be filed against him and others on 18.11.2002 and 19.11.2002 in the month of June i.e. 6.6.2003 and 7.6.2003. That after a spell of six months three more complaints came to be filed before Visnagar Police Station. It is submitted that accused is taking legal steps to see that in view of the charge of conspiracy punishable under Sec.120-B of Indian Penal Code, all the cases may be tried at one place and preferably consolidated. This complication, according to Mr. Shah, clearly suggests that there is no certainty as to when these investigations will be over or even trial would commence. A person of more than 75 years of age, can not be kept in jail with deteriorating health condition for indefinite period.

(iii) *The Apex Court in the case of Mithun v/s State of Madhya Pradesh, 1987 CrLJ P.1100, has held that when trial Court and prosecution is not able to expedite*

the trial so far as under-trial prisoners are concerned, the bail can be granted and refusal would amount to suit of custodial punishment. While dealing with earlier application filed by the applicant, the merits of the case was not exhaustively explored and, therefore, successive application for regular bail if filed can be considered, but legal obligation would be on the applicant to show that merits were not explored exhaustively or the same were not appreciated in the correct perspective and that has prejudiced the right of liberty of an individual. Age of the accused when is below 21 years and/or above 70 years, successive application normally should not be turned down mechanically.

19. *It is true that the petitioner is a leading citizen and was active in administration of the bank since 1982 and was a Minister in the year 1993 & 1994 for State of Gujarat in Co.Operation & Panchayat Department and bank deposits rose from Rs.50 Crores to approximately more than Rs.600 Crores between 1996 & 2000 and the Bank was a Scheduled Bank.*

State of Gujarat has faced disaster devastating entire part of the State of Gujarat including city of Ahmedabad on account of earthquake occurred on 26.1.2001 and the complainant Bank was one of the co-operative bank who had taken measures in helping borrowers and recovery of the amount was not made effective for a period of 2 years and on several occasions, relaxations also have been given as per the directions issued by RBI. One of the largest Co.Op.Bank of Gujarat i.e. Madhavpura Mercentile Co.Op.Bank Ltd. failed in clearing debt on 13.3.2001 and, therefore, there was a huge rush of the depositors to all other co-operative banks including the bank led by the present applicant and prosecution even has not disputed one fact alleged By Mr.. P.R.Nanavati, ld. counsel appearing for the applicant that about Rs.175 to Rs.200 Crores were paid to the depositors on request of withdrawal between 13.3.2001 and 16.3.2001 i.e. within four days and the officers of the Bank have cooperated RBI machineries and have responded practically all calls made between March 2001 and June 2001. ***However, it will be difficult to accept that the Bank is put to trouble only on the ground of political rivalry between***

the applicant and a sitting MLA Mr.Prahlad Patel and the Bank has been made victim by publishing misleading advertisements issued in local news paper. Financial crisis that has cropped up in the month of June & July 2001 destroyed the backbone of the bank. But these facts probably may not help the present applicant on merits because the prosecution is because of the financial irregularities committed collectively and under the leadership of the present applicant, is the main allegation. I would like to refer some of the observations of the Apex Court in the case of Ram Narain Poply v/s CBI, AIR 2003 SC 2748. In this cited decision, the Apex Court was dealing with the case of scam in nationalised bank's money utilised by Harshad Mehta and his group. Observations made in paras 363, 381, 382 and 383 would be relevant for the purpose of the present decision because present application was trustee of the amount of the bank headed by him.

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20. *This Court in the case of Mohammed Ali Pirbhai Dodhia v/s State of Gujarat, 2003(3) GLR 2267, considered*

regular bail application of the members of Board of Directors of Co.Op.Bank, has observed in paras 7 & 9 of the decision as under:-

> ***"7.*** *It was also argued on behalf of the petitioners that the collapse of the complainant Bank was not brought about by loan transactions and irregular advances to accused Nos. 13 to 16, but it was due to the loss of faith of the people in the Co-Operative banks in general on account of closure of one after another Co-Operative Bank as also due to the general recession, earthquake and communal riots in Gujarat. It was sought to be canvassed that even as huge loans running into more than 30 Crores were sanctioned on 31st March,2001 to a single group of borrowers, the bank was in a sound financial condition and the amounts of loans could be recovered from the borrowers' properties which were of much higher value. It was submitted that it was on account of politically motivated persecution of the main borrower that the transactions were painted as a scam. These arguments, however, could not*

cover or explain the gross irregularities in the matter of granting huge loans to several borrowers as alleged in the FIR.

9. *It was apparent from bare reading of the FIR that the Board of Directors and the officers of the Bank were in control of the funds of the Bank and it was, prima facie, disposed and dealt with in a way that no prudent banker would do even in absence of clear guidelines of the Reserve Bank of India and other Banking regulations. The result has been a special audit, closure of the bank's operations and loss of crores of rupees for the bank at least for the present. The FIR lodged after audit of transactions of the complainant Bank clearly alleges, with details of the modus operandi, deception, breach of trust and forgery in the matter of granting huge loans to accused Nos. 13 to 16.*

However, it can be observed that whether the Bank held the moneys of the depositors in fiduciary capacity or not, they owed a duty to the bank itself to secure the

advances and maintain liquidity for the survival of the Bank. The Board of Directors in general had, prima facie, failed in that. It is also prima facie evident that without the concerned effort and cooperation of all the accused persons, systematic siphoning of money would not have been possible."

21. *Having considered number of other decisions placed before the Court by ld. counsel Mr. Saurin Shah and ld. PP Mr. Oza including the decision in the case of Nur Ahemmad Abdulkadher Surti and Ors. v/s State of Gujarat while dealiang with Cri.Misc. Application No. 7741/2003 to 7753/2003 (group matters) and in the case of son of the present applicant i.e. Kaushikbhai Patel (viz.two decisions (i) first decision refusing bail plea dated 13.5.2003, and (ii) subsequent decision accepting the bail plea on changed circumstances dated 26.12.2003) and the order passed in the case of Ishwarbhai Tribhovandas Patel while dealing with Cri.Misc.Application No.1675/2003 dated 13.5.2003 (Coram: Akshay Mehta, J), it would not be either proper or justified to reject the bail plea absolutely.* ***This Court is of the view that present applicant does not deserve discretionary***

relief of regular bail irrespective of his age and health condition especially when number of criminal complaints are still under investigation, but on the ground of advanced age, temporary bail can be granted for a limited period on certain stringent conditions as submitted when ld. counsel Mr. Saurin Shah was brushing his final arguments to accept the bail plea on the strength of the certificate issued by Dr. Apurva Madia dated 4.4.2004. *I would like to quote relevant part of the said certificate:-*

> *"Bholabhai, pursuant to Bypass surgery undergone in 1996, had undergone Coronary Angioplasty with Rotablation in July 2003 at Apollo Hospital, Chennai at the hands of Dr. Samuel Mathews Kalarickel. This operation was not successful as within two months time Bholabhai again started to have Effort angina of class III nature, and dyspnea on exertion. This prompted us to do a stress test in October 2003, which was Strongly Positive for Ischemic Response, indicating that his Angioplasty and Ratablator operation had failed. This*

was confirmed by Angiography repeated by Dr. Sameer Dani on November 21,2003, which clearly showed that his Left Main artery had re occluded. His Right Coronary artery is also blocked upto 99%. Dr. Mathew was again consulted on 11th December, 2003 about the said aspect and he advised Bholabhai to continue taking conservative cardiac treatment at a good hospital under supervision of a cardiologist. Since then he is taking treatment at SAL Hospital at the hands of Dr.Sameer Dani.

Today, I had been asked by Dr.Sameer Dani to evaluate Bholabhai's heart condition and analyze the response to treatment given so far. Accordingly, I performed a 2 D Echo-Color Doppler Study on Bholabhai. This report shows that his LV Ejection Fraction is only about 25%, with 2 out of his three cardiac walls showing hardly any pumping activity and the third wall shows weak pumping. In addition one of his valves- the aortic valve- shows restricted opening due to Atherosclerotic degenerative changes."

22. *Ld. PP Mr. Oza confirms that*

the certificate issued is genuine and it is opined by Investigating Officer who is in charge of the investigation at present that the applicant is undergoing treatment and he may have to undergo prolonged treatment. According to Mr.Shah, health condition of the present applicant does not show any sign of improvement and, therefore, if the Court is not inclined to enlarge the applicant on regular bail, then he can be granted temporary bail of some longer period on any condition that the Court may deem just and proper and he may be asked to shift to his residential house i.e. 1, Utsav Bungalow, Nr.Drive-in Cinema in the city of Ahmedabad. It is pointed out by Mr.Shah that residential house of the applicant is opposite to SAL Hospital where the applicant is taking treatment at present and applicant is able to arrange for para-medical personnel and can get assistance and renown physician and doctor in couple of minutes in case of necessity or he can be shifted to SAL Hospital within very short notice. While developing his arguments, Mr. Shah has placed reliance on one decision in the case of State of Maharashtra v/s Captain Buddhikota Subba Rao, AIR 1989 SC 2292 and has taken me through relevant part of the decision. In this decision, the

Apex Court allowed the appeal and set aside the impugned order dated 18.6.1989 granting bail to the respondent accused whereby the accused was granted bail for a period of 2 months on the terms and conditions mentioned in the order. This order is turned down by the cited decision only to maintain judicial discipline and to fortify the observations made by the Apex Court in para-5 of the judgment in the case of Sahejjad Hussain Khan v/s Istiaque Hussain Khan, AIR 1987 SC 1613. The Apex Court found that for the reasons mentioned in the said decision, There was no justification for passing the impugned order in absence of substantial change in the facts situation. The impugned order before Supreme Court was found an order "bit out of ordinary", but the fact remains that the appellant for a limited period was once granted bail by Bombay High Court on conditions catalogued in the order permitting him to be kept in virtually under house arrest. So, all the arguments advanced before the Court and the fact that some similarly situated custodians and managers of the bank have been enlarged on bail by this Court by various other Benches, the applicant can be enlarged on bail for a temporary period. He may not be put virtually

under house arrest, but conditions appropriate can be imposed to take care of certain situation including the apprehensions expressed by ld.PP Mr.Oza.

XXX XXX XXX XXX

24. ... So, when the Court is called upon to exercise discretionary jurisdiction, then objectively should record a conclusion that in a given case, the Court is not inclined to grant bail because the same would cause injustice indirectly to the society. In another decision in the case of Ashok Dhhingara v/s NCP of Delhi, reported in AIR 2000 SC P.3537 wherein a Japanees citizen was cheated and defrauded by the Indian citizen, the Apex Court observed that the accused does not deserve bail, however, as the accused was on bail, the order of bail was not disturbed. Relevant observations made therein by the Apex Court are relevant for our purpose."

(emphasis applied for present order)

17. This Court while dealing with aforesaid petition has answered the question as to whether the accused whose regular bail application has been rejected,

can be granted a temporary bail or the bail for a fixed period and this Court has observed that on this point there are conflicting views of different High Courts and has referred to the decision in the case of ***State of Uttar Pradesh v. Atique Ahmed, reported in 2003 AIR SCW 2673***. The view of the Apex Court is that the accused whose regular bail application has been turned down on merit, cannot be granted temporary bail even on health ground. So this Court was not at all agreeable with the submission that the accused deserves regular bail and now Mr.A.D. Shah, learned senior counsel appearing for the petitioner, has placed the following main grounds before this Court which are not found favourable to the petitioner by this Court:

(i) That when the statement of complainant is running in hundreds of pages and the total witnesses are 162 in number, the trial would protract to indefinite period and the accused of this age should not be sent to prison again when he is enjoying protection.

(ii) The investigation is completed and there

is no scope for the petitioner to influence the witnesses and even appropriate conditions can be imposed for the very purpose.

(iii) That the health condition of the petitioner is also still not good and he is taking conservative treatment.

(iv) That this Court has not rejected the the regular bail application preferred earlier and if it is found that there is a strong prima facie case against the petitioner, he could not be kept in prison as it would be a pre-trial conviction and when it is easy to secure his presence at the time of trial, he should be enlarged on bail.

18. In the same way, the fact that the Apex Court permitted the petitioner to appear before the ld.JMFC, Visnagar and executed the bail bond as may be ordered by the ld.JMFC in three different offences registered at Visnagar, also would not twilt the balance in favour of the petitioner because the Special Leave Petition preferred by the present petitioner on the grounds and nature of reliefs prayed for as discussed earlier, was of the

type whereby it can be prayed that subsequent three FIRs filed at Visnagar are nothing but harassment to the petitioner because the details of those criminal wrongs can be made part of the present chargesheet and supplementary chargesheets could have been filed for that wrong. While appreciating the say of Mr.A.D. Shah qua the order of bail passed by the Apex Court for three different crimes registered with Visnagar Police Station, one more point emerges is that the wrong has not been committed only by the Manager, Office bearers or the staff members or Loan Committee of Usmanpura Branch at Ahmedabad but even at Visnagar also such or similar fraud has been committed and according to prosecution, the present petitioner is one of the main culprits. So the submission regarding innocence or ignorance qua irregularity and illegality is not prima facie found convincing. One audit report is also shown to the Court by Mr.A.D. Shah during the course of hearing, wherein the auditor has tried to note while doing audit of Visnagar Group Multipurpose Co-operative Society Ltd., Visnagar, that the members of the Executive Committee cannot be held liable individually under Section 93 of the Gujarat Co-operative Societies Act, 1961, placing

reliance on some decisions of this Court in the matter of Co-operative Societies and it is argued that there is constructive liability of all the members of the Board and the Committees and when other directors and members of Loan Committee, etc. are enjoying bail, the petitioner should not be asked to remain in prison. The proceedings drawn by the auditor and referred to by him are subsequent to the rejection of the earlier order of bail Court in the main crime and the auditor's report is of 30th May, 2005. The auditor's report in the matter of one co-operative society would not twilt the balance in favour of the petitioner in getting regular bail. It is likely that the Criminal Court may reach to a different conclusion then recorded by the auditor in criminal proceedings.

19. In earlier decision, it is observed that it is true that one of the main conspirators is Babulal Shivlal Shah, who is at present on temporary bail. It is also true that one witness has mainly involved the said accused Babulal Shah who according to prosecution was acting as an inter-mediator in passing the kick back money to the management, has not named/involved the present petitioner as an

accused. However, more than one witnesses i.e. Prahladbhai Karsanbhai, Shaileshkumar Kantilal, Rameshchandra Fulshankar Mehta, etc. have impeached the present petitioner, including Jasvant R. Patel, Ex-Manager of the Bank. It is rightly argued that the Apex Court in one of the cases has observed that economic offences ransacking financial stability of middle class or lower class depositors or investors, are more serious and grave. This Court is of the view that the case of the present petitioner falls in the category where he should not be granted bail on any ground. The present petitioner should be asked to face the trial as an undertial because the apprehension that he may influence even the witnesses who are required to be examined during trial were in service of the Bank and under obligation o the present petitioner or who can be pursued because of the earlier relations of such witnesses with the Bank and the management and when some of them are still on pay-roll of the Bank under administration, gets strengthen. It is also relevant fact that some of the accused are still absconding or the police is not able to arrest them for their involvement in the offence. When it is stated by the State that on each sensitive movement earlier,

the Jail Authorities had provided treatment to the petitioner from the bes available doctors and cardiologist and the petitioner was kept in Medical Ward specially maintained by the State in Sabarmati Central Prison, then there was no need to extend the temporary bail on the ground of health also because undisputedly, the petitioner now has to remain under conservative treatment and the scope of surgery by experts is practically nil. It is known fact to the society at large that a person taking conservative treatment is available to survive for several years who has undergone by-pass surgery in past. The petitioner, as observed earlier, once was the Minister in the State of Gujarat, having degree in Law and knowledge of working of a Co-operative Bank, cannot plead innocence or ignorance qua the huge irregularities which have taken place in the Visnagar Co-operative Bank Ltd.

20. The substantial amount of donation given to the charitable institutions is still lying in the respective bank account or some of the close relatives of the petitioner are likely to lose their deposits and the fact that the petitioner has not taken any loan for himself or for his family, etc.

are the weak arguments. If these arguments are accepted for granting bail liberally on the ground of health or advanced age, then I am afraid the people of senior age in the management of a financial institution may carve out methodical system under a conspiracy to siphon off large sum by not drawing single pai for himself and asking the office persons to keep some amount from the amount siphoned off, with the Bank as deposit or by keeping some amount as deposit, systematically huge amount can be siphoned off in the names of persons who have kept some deposits. So I am not attracted with this submission also which is made by Mr.A.D. Shah. Similar submissions were made before this Court on earlier occasion when application for regular bail was rejected on 22nd April, 2004.

21. It is true that one Special Leave Petition was preferred against the order passed by this Court on 09th February, 2005 but this Court at the relevant point of time was dealing with extension of bail for a fixed period granted by the earlier Court vide order dated 22nd April, 2004. Because of strong resistance by the State and detailed submissions which were made, a speaking order was passed on 09th

February, 2005. So the order dated 22nd April, 2004 was in the background and in the mind of Court. It is not possible for this Court to infer as to whether while preferring Special Leave Petition by the petitioner-accused against the order dated 09th February, 2005, earlier order dated 22nd April, 2004, attached for kind perusal of the Apex Court as annexure or not. It is neither possible nor necessary to comment upon the same but at least this Court can say that earlier rejection of the application vide order dated 22nd April, 2004, keeping a small window open by putting Condition "O", was a rejection of regular bail plea on merit discussing all grounds but as the petitioner is of advanced age and had taken treatment of a particular nature, keeping apprehension of certain serious turn in the health as discussed earlier, the said window was kept. It appears that by magnifying that Condition "O" referred to hereinabove, the petitioner has attempted to revive all the pleas which were placed before this Court, including the scope of protraction of trial on account of complicated investigation and large number of witnesses.

22. In view of above discussion and observations, the regular bail application of the present petitioner is hereby dismissed. The petitioner-accused needs to surrender himself before the Jail Authorities forthwith. The Apex Court had granted time to surrender to the petitioner-accused of a fixed period. However, without entering into the technicalities and directing the petitioner to approach the Apex Court for getting the time extended to surrender, this Court has extended the period of time to surrender to avoid frustration in the interest of justice. But now when the present bail petition is ordered to be dismissed, no such extension is granted. The petitioner-accused now shall surrender himself before the concerned Jail Authorities within a period of 10 (ten) days from today, failing which the competent Court shall take appropriate steps to secure his presence. Notice is discharged.

(C.K. Buch, J)

Aakar